

**Department of State Health Services
Agenda Item for State Health Services Council
January 30-31, 2008**

Agenda Item Title: Amendments to 25 TAC, §§205.1-205.9, 205.11-205.17, and repeal and new §205.10 relating to the regulation of bedding products.

Agenda Number: 4j

Recommended Council Action:

☐ For Discussion Only

☒ For Discussion and Action by the Council

Background:

The Product Safety Program is located in the Environmental and Consumer Safety Section of the Division for Regulatory Services and regulates bedding products to ensure sanitary conditions before sale to consumers. The Department issues permits to manufacturers, renovators, importers, distributors, wholesalers and germicidal treatment operators for all mattresses, bedding products, and processed materials. Division Inspectors visit retail facilities, resale shops, manufacturer and renovator facilities to determine compliance with the bedding rules. Findings of noncompliance result in referral for enforcement action. The budget and source of funding is general revenue.

Summary:

The bedding rules concern the regulation of bedding products and ensure that all mattresses and bedding products, such as pillows, are free from contamination due to unsanitary conditions in facilities of manufacturers, processors, and renovators. In addition, the rule requires standard labeling of filling materials used to produce bedding in order to provide the consumer with an accurate description of the content.

The proposed amendments bring the rules into compliance with the provisions of House Bill (HB) 1752, 79th Legislature 2005, and HB 2471, 80th Legislature 2007, both of which amended Health and Safety Code, Chapter 345. This legislation concerns minimum standards for germicidal treatment operators who treat secondhand bedding, and the treatment and sale of floor model bedding. The rules comply with the mandatory review of agency rules in Government Code, §2001.039, and additional amendments are made to correct errors in language and punctuation to provide clarity to the existing rule language.

Summary of Input from Stakeholder Groups:

The department received feedback from stakeholders, including bedding permit holders, the Texas Association of Rental Agencies and the Texas Retailers Association, during the 2005 and 2007 legislative process. This feedback showed wide-spread stakeholder support for the statutory revisions under HB 1752 and HB 2471, which are currently being implemented in this proposed rule. The department also surveyed small and medium furniture retail and rental businesses regarding the revised record keeping provisions in the proposed rules and determined that the impact to these businesses would be minimal. The proposed rules to implement HB 1752 and HB 2471 were posted on the department website for stakeholder review and feedback in October 2007. The department also mailed a letter requesting feedback on the proposed rules to all bedding permit holders, including bedding manufacturers, renovators, importers, distributors, and germicidal treatment operators on December 20, 2007. No further feedback or comments have been received from stakeholders regarding these proposed rules.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #4j.

Agenda Item Approved by Assistant Commissioner/Director: Kathryn C Perkins **Date:** 12/31/07

Person Presenting: Annabelle Dillard **Program:** Product Safety Program/Regulatory Division **Phone No:** 834-6608

Final CAM Approved by Consumer Affairs: RMM **Date:** 12/19/07

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 205. Product Safety
Subchapter A. Bedding Rules
Amendments §§205.1-205.9, 205.11-205.17
Repeal §205.10, New §205.10

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) proposes amendments to §§205.1-205.9, 205.11-205.17 and the repeal of §205.10 and new §205.10 concerning the regulation of bedding products.

BACKGROUND AND PURPOSE

The amendments are necessary to implement House Bill (HB) 1752 passed during the 79th Legislature, Regular Session (2005), which relate to the regulation of germicidal treatment of secondhand bedding items. HB 1752 amends Health and Safety Code (HSC), Chapter 345, by adding §345.045, entitled “Minimum Sanitary Standards for Germicidal Treatment Permit,” which establishes minimum sanitary conditions for businesses holding a germicidal treatment permit. HB 1752 also authorizes the Executive Commissioner of the commission to promulgate rules to establish additional regulatory requirements for sanitary conditions.

Additional amendments are required to implement HB 2471 passed during the 80th Legislature, Regular Session (2007), which relate to the treatment and sale of certain bedding. This bill amends HSC, Chapter 345 by amending the definitions for “new” and “secondhand” and adding a new definition for “floor model.” HB 2471 also amended HSC, Chapter 345, by adding §345.0065 “Applicability of Chapter to Floor Model.” These amendments exempt floor models from being regulated as secondhand, which formerly required that floor models be germicidally treated and tagged as secondhand bedding.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 205.1-205.17 have been reviewed and the department has determined that the reasons for adopting the sections continue to exist because rules on this subject are needed to regulate the quality of bedding and to protect public health. However, §205.10 is being repealed and is proposed as a new rule.

SECTION-BY-SECTION SUMMARY

Amendments to §§205.2 and 205.8 change the definitions of “new” and “secondhand,” add a new definition for “floor model,” and add §205.8(a)(1)(D), which is necessary due to a change in legislation exempting floor models from regulation as secondhand. Additional amendments to §§205.1, 205.2, 205.4 - 205.9, and 205.12 - 205.17 provide clarification and correction to the rules. Amendments to §205.3 reflect the new Federal Flammability Standards and add

recordkeeping requirements to better document the progress of bedding from the manufacturer to the consumer. Repeal of existing §205.10 and the addition of new §205.10 establishes minimum sanitary standards for germicidal treatment operators that germicidally treat ten or fewer items of bedding per week. Amendments to §205.11 clarify language to reflect the two-year term for permits, and implement changes to the minimum sanitary conditions for businesses holding a germicidal treatment permit.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each calendar year of the first five years §§205.1, 205.3 - 205.7, and 205.9 - 205.17 are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed. Regarding §205.2 and §205.8, there will be an effect on state government which is anticipated to decrease the number of germicidal treatment permits issued by 2%, and would result in a decrease in licensing revenue to the state of \$2,090 each year for calendar years one through five. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT

Ms. Tennyson has also determined that there will be no negative effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Regarding §205.2 and §205.8, the financial burden of \$110 per two year permit term for small and micro-businesses will be alleviated for some small and micro-businesses due to a change in legislation exempting floor models from regulation as secondhand. There is no anticipated negative impact on local employment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Ms. Tennyson has determined that some small businesses are subject to regulation under the proposed rules. However, no additional economic burden is associated with the proposed regulatory changes so no adverse economic impact to small businesses is anticipated. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is a clearer interpretation of the rules.

REGULATORY ANALYSIS

The department has determined that this proposal is not a “major environmental rule” as defined by Government Code, §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. The proposal does not result in any of these adverse effects.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Andrea Lopez, Public Health Sanitation and Consumer Product Safety Group, Policy, Standards, and Quality Assurance Unit, Environmental and Consumer Safety Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, or by email to Andrea.Lopez@dshs.state.tx.us. Written comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies’ authority to adopt.

STATUTORY AUTHORITY

The proposed rules are authorized by Health and Safety Code, §345.0435; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The proposed readoption of these rules is authorized by Government Code §2001.039, which requires each state agency to review and consider for readoption each rule adopted by the agency pursuant to the Government Code, Chapter 2001.

The proposed rules affect the Health and Safety Code, Title 5, Chapter 345.

Section For Repeal

§205.10. Adjustments to the Minimum Requirements.

Legend: (Proposed Amendments)

Single underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for this designated subdivision

§205.1. Purpose and Scope.

The purpose of these sections is to designate the requirements and the terms, definitions, nomenclature, and conditions as commonly used and recognized in the manufacture, sale, and distribution of bedding and furniture products and filling materials. Classifications of materials in these regulations are intended to have understandable meaning to regulated businesses and consumers. The definitions used are in conformity with those adopted by the majority of states, Canada, the Federal Trade Commission and the International Association of Bedding and Furniture Law Officials.

§205.2. Definitions.

(a) The following words and terms, when used in this chapter, shall have the following meanings unless the context otherwise specifically requires.

(1) - (2) (No change.)

(3) Bedding -- A mattress, mattress pad, mattress protector, box spring, sofa bed, studio couch, chair bed, convertible bed, convertible lounge, pillow, bolster, quilt, quilted spread, comforter, cot pad, sleeping bag, lounge chair pad, utility or all-purpose pad, crib pad, playpen pad, crib bumper pad, car bed pad, infant carrier pad, convertible stroller pad, bassinet pad, bed rest and lounge-type cushion, or a stuffed or filled article that can be used by a human for sleeping or reclining.

(4) - (8) (No change.)

(9) Floor Model -- New bedding placed in a retail sales area for display purposes.

(10) [(9)] Germicidal Treatment Operator -- A person who sanitizes used bedding articles or filling materials by a method or process that has been approved by the department.

(11) [(10)] Importer -- A person who on his own account sells or distributes in this state bedding, or filling material to be used in bedding, that was manufactured or processed in a country other than the United States. The term does not include an affiliate or subsidiary if the ownership and name of the affiliate or subsidiary are the same as the manufacturer, and the affiliate or subsidiary is the exclusive sales outlet for the manufacturer.

(12) [(11)] Label, law label, labeled, tag and tagged -- May be used interchangeably and means any label or tag required to be on or affixed to finished bedding products and processed filling material and on which the information required is to appear.

(13) [(12)] Manufacturer -- A person whose principal business is the manufacture of bedding from new materials for the purpose of resale in this state by a distributor, wholesaler, importer, or retail outlet or subsidiary outlet if the ownership and name are the same as the manufacturer, or if it is an exclusive sales outlet for the manufacturer, or both.

(14) [(13)] Material -- An article, substance, or part of an article or substance, used in the manufacture, repair, or renovation or bedding.

(15) [(14)] New -- Bedding or filling material that has had no previous use in any manner other than previous use as a floor model [for any purpose].

(16) [(15)] Pillows and cushions -- Any bag, case, or covering which has been stuffed or filled and which is not an integral part of another item of bedding or furniture but which can be used by human beings for sleeping, resting, or reclining purposes. The terms do not apply to pillows or cushions which do not exceed 10 inches in their greatest dimension or have permanently affixed figurines, statuettes, dolls, etc.

(17) [(16)] Processed filling material -- Felt, batting, pad, foam product, quilted product, or any other filling material which has been prepared, manufactured, or processed into a form in which it can be used in articles of bedding.

(18) [(17)] Processor -- A person who manufactures or processes, and sells in this state or for delivery in this state any filling materials, including felt, batting, pads, or foam, to be used or that could be used in bedding, other than frames or metal springs.

(19) [(18)] Recycled material -- Material that:

(A) is composed of recyclable material or that is derived from post consumer waste; and

(B) may be used in place of raw or virgin filling material in manufacturing, repairing, or renovating bedding.

(20) [(19)] Renovate -- To restore to a former condition or to place in a good state of repair.

(21) [(20)] Secondhand -- Bedding or filling material with previous use in any manner, other than previous use as a floor model.

(22) [(21)] Sell -- Offer, or expose for sale, include in a sale, barter, trade, deliver, consign, lease, possess with intent to sell or dispose of in any commercial manner. For purposes of these sections, lease shall also include the term "rent" when used for commercial purposes.

(23) [(22)] Wholesaler -- A person located outside this state who on his own account sells, distributes, or jobs into this state to another for the purpose of resale bedding or

filling material to be used in bedding. This does not include an affiliate or subsidiary if the ownership and the name of the affiliate or subsidiary are the same as the manufacturer, and the affiliate or subsidiary is the exclusive sales outlet for the manufacturer.

(b) (No change.)

§205.3. General Requirements.

(a) - (b) (No change.)

(c) Each item of bedding and processed filling material shall be labeled in conformity with the requirements of the Act and these regulations. This requirement does not apply to a custom upholstery **[customupholstery]** business that does not repair or renovate bedding for resale.

(d) - (e) (No change.)

(f) The terms “all,” “pure,” “100%,” or terms of similar meaning **[import]** are permitted only if the material is as stated. No tolerance is allowed where such terms are used.

(g) - (j) (No change.)

(k) Identification and storage of secondhand bedding articles and filling materials shall be as follows:

(1) Persons engaged in the manufacture, distribution, wholesaling, importation, renovation, processing, and/or germicidal treatment shall keep new and secondhand articles and/or materials segregated.

(2) - (3) (No change.)

(l) Mattresses and mattress pads manufactured, renovated or delivered into or within this state for purposes of sale in this state shall meet the federal standard for flammability of mattresses set forth in 16 Code of Federal Regulations, Parts **[Part]** 1632 and 1633.

(m) Record keeping.

(1) Persons engaged in the business of selling, leasing, renting, or storing articles of bedding shall retain the purchase order, sales contract, invoice, receipt, lease, rental agreement, return authorization and other documentation recording each purchase, sale, lease, rental, return, and other transaction of an article of bedding.

(2) Any records and documents required by this subsection shall be made available for inspection by the department and by any law enforcement agency immediately upon request.

(3) Records and documents required by this subsection shall be retained for a period of two years after the sale, lease, rental and other transaction of an article of bedding. Persons engaged in the business of selling, leasing, renting, or storing articles of bedding who cease to do business shall notify the department in writing 30 days prior to such event to advise how they will maintain all records during the minimum two-year retention period. The department, upon receipt of such notification and at its option, may provide instructions for how the records shall be maintained during the required retention period. A person engaged in the business of selling, leasing, renting, or storing articles of bedding shall notify the department that the person has complied with the department's instructions within 30 days of receiving the instructions or make other arrangements approved by the department. Failure to comply may result in disciplinary action.

§205.4. Labeling Requirements.

(a) It shall be unlawful to make any false or misleading statement on any label or tag required by the Act and these regulations. ~~;~~ It [it] shall be unlawful for any person to remove, deface, alter, or position any label or tag or statement thereon for the purpose of defeating the provisions of the Act and these regulations, except that the label or tag may be removed by the consumer.

(b) - (j) (No change.)

(k) Labels shall be affixed to the outer covering of bedding articles and shall be so located as to make the label and the information thereon completely and clearly visible to the purchaser at all times. Germicidal treatment label attachment methods shall have prior approval by the department. Specific locations for label attachments shall be as follows:

(1) (No change.)

(2) Articles such as quilted bedspreads, mattress protectors, quilts, etc., packaged in clear or see-through **[see through]** packaging material shall be folded in such a manner so that the label and printed matter thereon is visible to the purchaser.

(3) (No change.)

(4) Processed filling material identification tag location is optional, except that it shall be securely attached where clearly visible.

(5) - (7) (No change.)

(8) Attaching the label in a location or manner which, while the article of bedding is on display for sale, conceals the label from open view to the purchaser shall be considered **[as]** a willful act to intentionally defeat the intent of the Act and these regulations.

(l) The different types of required labels and illustrations of each are as follows:

(1) The label attached to bedding wholly manufactured from new materials shall have a minimum size of six square inches and shall state the following, plainly stamped or printed in black ink on all white material:

(A) - (D) (No change.)

(2) The label attached to bedding, any part of which is manufactured or renovated from secondhand or recycled material, other than bedding reworked, repaired, or renovated for the owner for the owner's own use, shall be at least 12 square inches and shall state the following, plainly stamped or printed in red ink on all white material:

(A) - (B) (No change.)

(C) shall be in the following form:

Figure: 25 TAC §205.4(l)(2)(C) [Figure: 25 TAC §205.4(l)(2)(C)]

UNDER PENALTY OF LAW THIS TAG [LABEL] MUST NOT BE REMOVED EXCEPT BY THE CONSUMER
THIS ARTICLE CONTAINS SECONDHAND MATERIAL REG. NO. _____

(3) The label attached to material or bedding that has been germicidally treated shall be at least 12 square inches and shall state the following, plainly stamped or printed in black ink on all yellow material:

(A) - (F) (No change.)

(G) shall be in the following form:

Figure: 25 TAC §205.4(1)(3)(G) [Figure: 25 TAC §205.4(1)(3)(G)]

<p>UNDER PENALTY OF LAW THIS TAG SHALL NOT BE REMOVED EXCEPT BY THE CONSUMER</p>
<p>Certification is made that this SECONDHAND (USED) ARTICLE SANITIZED</p> <p>This Article of Bedding Has Been Treated by a Germicidal Process Approved by the Texas Department of <u>State Health Services</u></p>
<p>Lot No. _____ <u>Tag [Label]</u> No. _____ Article _____ Method _____ Date _____</p>
<p>Reg No. _____</p>

(4) The processed filling material label is an identification label. The type and material of this label is optional. However, the label shall be visible, the printed matter shall be legible, generic terms shall be used as the descriptive terminology, and the processor's identification number assigned by the department shall be stated. Illustrations of a form for this label follow:

Figure: 25 TAC §205.4(1)(4) (No change.)

§205.5. Definitions and Designations of Filling Materials.

(a) (No change.)

(b) Down.

(1) The term "down" by itself may be used for the soft undercoating of waterfowl consisting of the light fluffy filaments grown from one quill-point but without any quill shaft. It

is permissible [**permissable**] to use the name of the fowl from which the down is obtained, such as goose down, duck down, etc.

(2) - (4) (No change.)

(5) The tolerance levels for the labeling of down are as follows:

(A) a minimum of 80% down, plumules, and down fiber consisting of: [;]

(i) [**consisting of**] down and plumules--minimum of 70%; and

(ii) [**consisting of**] down fiber--minimum of 10%;

(B) the remaining 20% may consist of a combination of the following:

(i) – (iv) (No change.)

(v) residue--maximum 2.0%; and/or

(vi) (No change.)

(6) (No change.)

(c) Feathers.

(1) - (9) (No change.)

(10) Feather mixtures [**when**] from two or more species shall be designated by name, character, and percentage by weight of each constituent in order of predominance, or [**mixtures may be designated**] by lowest grade as to species of origin (grades in descending order: goose, duck, turkey, and chicken).

(d) Foam.

(1) (No change.)

(2) Foam is polymerized material consisting of a mass of thin-walled cells produced chemically or physically which is created by the interaction of an ester or [**an**] ether and a carbamic acid derivative.

(3) The term “synthetic foam” may be used as a definition in lieu of the following generic terms:

(A) - (D) (No change.)

(E) vinyl foam; or [**and**]

(F) (No change.)

(4) - (6) (No change.)

(e) Hair.

(1) Hair--The coarse filamentous epidermal outgrowth of such mammals as horses, cattle, hogs, and goats when used in the manufacture of bedding, upholstered furniture, and filling materials. It shall be clean, properly cured, and free from epidermis, excreta, and other foreign or objectionable substances and odors.

(2) (No change.)

(f) Manufactured fibers.

(1) Acetate fiber--Manufactured fiber in which the fiber-forming substance is cellulose acetate. Where not less than 92% of hydroxyl groups are acetylated, the term triacetate may be used as a generic description of the fiber.

(2) - (17) (No change.)

(g) - (i) (No change.)

(j) Gel. Generic term for any filling material of a semi-solid form, typically encased in a leak proof fabric cover and consisting of a mixture of water or other liquid base, dissolved chemicals, and/or a suspension of other chemicals, which provides special ergonomic and resiliency properties.

(k) (No change.)

(l) Universal definitions. The following terms are common industry definitions for fibers obtained as by-products during the various machine operations necessary in the manufacture of cotton yarn up to but not including the process of spinning. These terms must be preceded by the name of the textile fiber from which it is produced.

(1) - (4) (No change.)

(5) Picker, picker motes, or motes--Matted or tangled masses of fiber resulting from the opening and cleaning of fibers in the opener room of the textile mill.

(6) (No change.)

§205.6. Adjunctive Terms.

(a) - (f) (No change.)

(g) Pieces--Urethane foam and rubber products which have been cut or broken into pieces of indefinite shape, size, or form, but not shredded. The term applies to loose as well as cemented or bonded filling material (e.g., urethane foam pieces, latex foam rubber pieces).

(h) - (k) (No change.)

(l) Waste--By-products or reclaimed materials which have the following characteristics:

(1) cotton waste containing more than 10% of hull, leaf, stem, and pulp; or

(2) (No change.)

(m) (No change.).

§205.7. Suggested Terminology for Various By-Products.

(a) (No change.)

(b) Examples of terminology for blended filling materials consisting of various unknown kinds and percentages of fibers, threads, fabric pieces, etc., and which have **[has]** been processed into a pad or felt form are as follows:

(1) - (4) (No change.)

(c) (No change.)

§205.8. Germicidal Treatment Requirements; Methods.

(a) General Requirements.

(1) Secondhand bedding articles.

(A) - (C) (No change.)

(D) New bedding and new floor model bedding that has also been used for another purpose, or that has been previously sold, leased, rented or otherwise distributed to the public is secondhand bedding and is subject to all secondhand bedding regulations.

(2) Renovated bedding articles.

(A) - (B) (No change.)

(C) The outer covers on secondhand mattresses and box springs to be renovated **[enovated]** or rebuilt for resale shall be removed to expose the concealed filling materials. Materials described in paragraph (2)(B) of this subsection shall be removed and

discarded. When the chemical method of germicidal treatment is used, the mattresses and box springs shall be treated prior to the installation of new covers. Secondhand covers shall not be reused regardless of the germicidal treatment method.

(b) Treatment methods.

(1) Chemical spray.

(A) (No change.)

(B) Mechanical, compressed air, hand pump, or electric sprayers must be used and they must be of the continuous spray type. No intermittent **[intermittant]** spray devices are allowed.

(C) - (G) (No change.)

(2) Dry heat.

(A) (No change.)

(B) The dry heat chamber shall be equipped with a recording clock to accurately record the time and temperature. The clock shall be attached on the outside of the chamber and the heat bulb sending unit must be installed within the chamber at the furthest **[furthestest]** point practical from the entry of the heat.

(C) - (D) (No change.).

(3) Steam.

(A) (No change.)

(B) An alternate method may consist of two applications of streaming steam, maintained for a period of one hour each, to be applied at intervals of no **[not]** less than six hours and no **[nor]** more than 24 hours.

(4) - (6) (No change.)

§205.9. Sanitary Premises. Every person engaged in the business of manufacturing, renovating, **[or]** processing, or germicidally treating bedding and/or bedding materials, except permitted germicidal treatment operators treating 10 or fewer items of bedding each week, shall keep each business location in a sanitary condition by complying with the following minimum requirements.[:]

(1) (No change.)

(2) All work rooms shall be well-ventilated [**well ventilated**], and high dust counts, odors, and stale air shall not be permitted. Dust control measures may include the housing or partitioning of dust-producing [**dust producing**] machinery from other work rooms and the installation of metal hoods and extraction fans over dust-producing [**dust producing**] machinery.

(3) - (4) (No change.)

(5) Walls and ceilings of all rooms where materials are stored, processed, or otherwise used in the manufacturing or renovating of bedding, shall be of tight, smooth construction; [,] shall be painted; [,] and shall be kept clean and in good repair. Cracks or recesses which would tend to harbor vermin and pathogens shall not be allowed.

(6) (No change.)

(7) There shall be no living quarters in the rooms, or opening directly into the rooms, where materials are stored, processed or otherwise used in the manufacturing or renovating of bedding.

(8) (No change.)

(9) Adequate and clean hand-washing [**hand washing**] facilities shall be provided. One lavatory (wash basin) with adequate and acceptable water supply shall be provided for every 20 employees or portion thereof up to 100 persons and one lavatory (wash basin) for each additional 25 persons or portions thereof. Soap or a suitable cleaning agent shall be provided at each lavatory.

(10) (No change.)

Legend: (Proposed New Rule)

Regular Print = Proposed new language

§205.10. Sanitary Premises, Standards for Certain Permitted Germicidal Treatment Operators. Every person engaged in the business of germicidally treating no more than 10 items of bedding each week shall maintain each business location in a sanitary condition by complying with the following minimum requirements.

(1) Adequate housing and floor space shall be provided to prevent crowding of materials and equipment and to allow for the practice of cleanliness and sanitation. Articles of bedding and processed bedding materials used in bedding shall be securely housed at all times and may not be exposed to the elements.

(2) All work rooms shall be well-ventilated and high dust counts, odors, and stale air shall not be permitted. Dust control measures may include the housing or partitioning of dust

producing machinery from other work rooms and the installation of metal hoods and extraction fans over dust-producing machinery.

(3) All work rooms shall be well lighted.

(4) The floors of all rooms in which bedding and materials are stored, processed, or otherwise used in bedding or in the germicidal treatment of bedding, shall be of such construction as to be easily cleaned, and shall be kept clean and in good repair.

(5) Walls and ceilings of all rooms where bedding and materials are stored, processed, or otherwise used in bedding or in the germicidal treatment of bedding, shall be kept clean and in good repair. Cracks or recesses that would tend to harbor vermin and pathogens shall not be allowed.

(6) All buildings, rooms therein, and immediate surroundings shall be kept in neat and clean condition. All rooms and surroundings shall be free of rubbish, trash, discarded equipment, or other unnecessary articles that may promote unsanitary conditions.

(7) There shall be no living quarters in the rooms, or opening directly into the rooms where bedding and materials are stored, processed or otherwise used in bedding or in the germicidal treatment of bedding.

(8) Clean toilet facilities of a type acceptable to the department shall be provided.

(9) Adequate and clean hand-washing facilities shall be provided. One lavatory (wash basin) with adequate and acceptable water supply shall be provided for every 20 employees or portion thereof up to 100 persons and one lavatory (wash basin) for each additional 25 persons or portions thereof. Soap or a suitable cleaning agent shall be provided at each lavatory.

(10) A water supply and drinking fountain acceptable to the department shall be provided. Paper cups with dispenser may be used instead of a fountain. The use of a common drinking cup is prohibited.

Legend: (Proposed Amendments)

Single underline = Proposed new language

[Bold, Print, and Brackets] = Current language proposed for deletion

Regular print = Current language

(No change.) = No changes are being considered for this designated subdivision

§205.11. Permit Requirements; Types; Application; Conditions; Suspension.

(a) General requirements.

(1) - (4) (No change.)

(5) **[Prior to January 1, 2005, the term of all licenses is one-year and expires on the anniversary of the effective date, unless renewed.]** Effective January 1, 2005, the term of all permits **[licenses]** is two years. **[Some licenses will be renewed for a one-year term in 2005, in a manner to be determined by the department and two years thereafter.]** The department may prorate permit fees as appropriate to provide for a common expiration date for persons holding and/or applying for more than one permit.

(6) (No change.)

(b) Types of permit and permit fees.

(1) - (3) (No change.)

(4) Wholesaler/Distributor Permit. Required of all wholesalers and distributors of bedding articles or filling materials prior to shipping such articles or filling materials into this state for the purpose of resale. Permit fees are graduated based on the number of articles or units of filling materials the wholesaler/distributor is requesting authorization to ship during the permit period. The fees are set out in **[Schedule B,]** subsection (b)(3) of this section.

(5) Importer Permit. Required of all importers of bedding articles or filling materials prior to shipping such articles or filling materials into this state for the purpose of resale. Permit fees are graduated based on the number of imported articles or units of filling materials the importer is requesting authorization to ship during the permit period. The fees are set out **[in Schedule B]** in subsection (b)(3) of this section.

(6) - (8) (No change.)

(c) Permit application.

(1) Application for an initial permit or to renew an expiring permit must be made through the department on an approved application form which may be obtained from the Product Safety Program, Environmental and Sanitation Licensing Group, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(2) A separate permit application must be completed and submitted for each specific **[permit applied for at each specific]** business location or plant location.

(3) (No change.)

(4) Additional information that may be required by the department includes the following:

(A) a copy of current permit(s) **[permits]** or license(s) **[licenses]** issued by another state[,] or states;

(B) a copy of the most recent bedding inspection report if the business or plant is located in a city, county, state or country that has bedding laws and regulations and conducts inspections;

(C) - (D) (No change.)

(E) a confirmation of compliance with applicable federal flammability standards for mattresses and mattress pads or test results from an independent testing facility acceptable to the department;

(F) an explanation of the germicidal treatment method to be applied to second-hand articles of bedding; and

(G) (No change.)

(d) Permit conditions.

(1) - (4) (No change.)

(5) Each person required to obtain a permit shall maintain each business location in a sanitary condition free from refuse, dirt contamination, insects, and vermin that complies with §205.9 of this title (relating to Sanitary Premises) or §205.10 of this title (relating to Sanitary Premises, Standards for Certain Permitted Germicidal Treatment Operators), as applicable._

(A) A permit holder who is required to comply with the sanitary premises requirements of §205.9 of this title and also germicidally treats no more than 10 items of bedding each week in the same facility must comply with the sanitary premises requirements of §205.9 of this title.

(B) The holder of a germicidal treatment permit who germicidally treats no more than 10 items of bedding at the permit holder's place of business each week is exempt from any additional requirements regulating the sanitary condition of a permit holder's place of business adopted under the Texas Health and Safety Code, §345.045(b).

(6) - (7) (No change.)

(e) Permit denial, suspension, revocation.

(1) An application for permit issuance or renewal will be denied by the department if the applicant fails or refuses to provide a complete application, pay the appropriate permit fee, provide requested information or product samples or test results, or if the business location or plant location is not in a sanitary condition in violation of the Act or these **[and]** regulations.

(2) (No change.)

(3) A permit may be suspended or revoked by the department if the permit holder fails to maintain the permitted business location or plant location in a sanitary condition;[,]
manufactures or renovates and sells mattresses or mattress pads that do not comply with federal flammability standards;[,]
fails to germicidally treat articles of used bedding prior to resale;[,]
or commits any other or repeated violations of the Act or these regulations.

§205.12. Administrative Penalty.

(a) - (e) (No change.)

(f) Violations shall be placed in one of the following severity levels.[:]

(1) Critical violation. Severity Level III includes the types of violations that are the most significant and present a threat to public health and safety. The base penalty for a first violation will generally not exceed \$10,000 per day, per violation. The same violation continuing after written notification by the department constitutes **[constitute]** separate violations. Examples of Severity Level III violations include but are not limited to:

(A) - (J) (No change.)

(2) - (3) (No change.)

(g) - (n) (No change.)

§205.13. Detained or Embargoed Bedding.

(a) - (b) (No change.)

(c) The notice or marking on detained or embargoed bedding must warn all persons not to use the bedding, remove the bedding from the premises, or dispose of the bedding by sale or otherwise until permission for use, removal, or disposal is given by the commissioner, an **[the]** authorized agent, or a court.

(d) A person may not use detained or embargoed bedding, remove detained or embargoed bedding from the premises, or dispose of detained or embargoed bedding by sale or otherwise without permission of the commissioner, an **[the]** authorized agent, or a court.

(e) (No change.)

§205.14. Removal Order for Detained or Embargoed Bedding.

(a) - (c) (No change.)

(d) The commissioner may request the attorney general to bring an action in the district court in Travis County to recover the costs of the transfer. In a judgment **[judgement]** in favor of

the state, the court may award costs, attorney fees, court costs, and interest from the time the expense was incurred through the time the department was reimbursed.

§205.15. Condemnation. Action [**An action**] for [**the**] condemnation of bedding may be brought before a court in whose jurisdiction the bedding is located, detained, or embargoed if the bedding violates the Act or these regulations.

§205.16. Recall Orders.

(a) - (f) (No change.)

(g) If the claimant or the claimant's agent fails or refuses to carry out the recall order in a timely manner[,], the commissioner may provide for the recall of the bedding. The costs of the recall shall be assessed against the claimant of the bedding or the claimant's agent.

(h) (No change.)

§205.17. Inspection.

(a) To determine compliance with the Act or regulations, an authorized representative, or representatives, may enter a location [**place**] at which:

(1) - (3) (No change.)

(b) - (c) (No change.)

Section for Repeal

~~§205.10. Adjustments to the Minimum Requirements~~

~~The department shall, through its authorized representatives, have the right to require adjustments to the minimum requirements set forth in these sections when such adjustments are deemed necessary for the protection of the public health and public welfare.~~